IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.Nos.2280 and 2606 of 2018
and C.M.P.No.17369 of 2018

The Oriental Insurance Company Ltd.,
Kumar Complex, 1st Floor,
146, West Car Street,
Tiruchengode Taluk, Namakkal District.
Divisional Office:
Parimalam Complex, 11, EVN Road, II Floor,
Erode 638 011. .. Appellant in C.M.A.No.2280/2018/
and 2nd Respondent in CMA.2606 of 2018/
2nd Respondent

Vs.

1.Lakshmi
2.Kalaiselvi
3.Murugesan .. R1 to R3 in CMA.No.2280 of 2018
and Appellants in CMA.2606 of 2018/
Claimants

4.Mani
5.Karunakaran ..3rd & 4th Respondents in
C.M.A.No.2280/2018
and R1 & R3 in CMA.2606 of 2018/
R1 and R3

(R4 and R5 are set exparte before the Tribunal)

Common Prayer:

These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 24.01.2018 made in M.C.O.P.No.78 of 2016 on the file of the Special District Judge, Full Additional Charge, (Motor Accidents Claims Tribunal), Erode.

For Appellant : Mr.N.Vijayaraghavan
In C.M.A.No.2280/2018 and
for R2 in CMA.No.2606/2018

For R1 to R3 : Mr.T.S.Arthanareeswaran
and for Appellant in CMA.2606/18

C O M M O N   J U D G M E N T

These Civil Miscellaneous Appeals have been filed against the award and decree dated 24.01.2018 made in M.C.O.P.No.78 of 2016 on the file of the Special District Judge, Full Additional Charge, (Motor Accidents Claims Tribunal), Erode.

2.Both the appeals arise out of the same award and hence, they are disposed of by this common judgment.

3.The parties are referred to as per their rank in the claim petition.

4.The claimants filed M.C.O.P.No.78 of 2016 on the file of the Special District Judge, Full Additional Charge, (Motor Accidents Claims Tribunal), Erode, claiming a sum of Rs.25,00,000/- as compensation for the death of one Perumal, husband of the 1st claimant and father of the claimants 2 and 3, who died in the accident that took place on 25.05.2016.

5.According to the claimants, while the deceased was riding a two wheeler – TVS XL Super bearing Registration No.TN-34-4044, he dashed against one stationed Hero Honda Passion Plus-motor cycle bearing Registration No.TN-33-AM-1820. In the accident, the deceased fell down and sustained grievous injuries and died inspite of the treatment. The deceased was doing cultivation and earning Rs.15,000/- per month. In the accident, two vehicles were involved. The premium was paid for the driver of the two wheeler, TVS XL Super driven by the deceased. The 1st respondent is owner of the vehicle and the 2nd respondent is the insurer of the vehicle. The 3rd respondent is owner of the stationed two wheeler, Hero Honda Passion Plus bearing Registration No.TN-33-AM-1820 and he was added as a formal party.

6.The 2nd respondent-Insurance Company filed counter statement and contended that a sum of Rs.50/- was paid as premium towards Personal Accident cover to owner-driver. The deceased is neither registered owner nor mentioned in the policy. The deceased is not entitled to any compensation under Personal Accident cover. The claimants have stated in the claim petition that the deceased was earning Rs.15,000/- per month and hence, the claim petition filed under Section 163-A of the Motor Vehicles Act (hereinafter referred to as 'the Act') is not maintainable and prayed for dismissal of the claim petition.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that as per Section 163-A of the Act, negligence on the part of the driver need not be proved and the deceased was a third party and held that insurance policy was in force and hence, the 2nd respondent-Insurance Company is liable to pay compensation to the claimants. The Tribunal awarded a sum of Rs.2,22,860/- along with interest at the rate of 7.5% p.a from the date of petition till the date of deposit.

8.Against the said award of the Tribunal, the 2nd respondent-Insurance Company has filed C.M.A.No.2280/2018, questioning the liability as well as the quantum of compensation.

9.Not being satisfied with the compensation awarded by the Tribunal, the claimants have come out with C.M.A.No.2606/2018 for enhancement of compensation.

10.The learned counsel for the 2nd respondent-Insurance Company contended that the petition filed under Section 163-A of the Act is not maintainable as the deceased was a tort-feaser. The deceased was a tort-feaser and wrong doer and hence, he is not entitled to claim compensation from the 2nd respondent-Insurance Company. The deceased was not a workmen or paid driver of the 1st respondent. He borrowed the vehicle from the 1st respondent and hence, he is not covered under the policy. The deceased was not a third party or not even covered under the policy and therefore, the petition filed under Section 163-A of the Act, by the claimants is not maintainable. The Tribunal failed to appreciate the records from the Government Hospital, which are contradictory regarding the death of the deceased. The Tribunal failed to see that fitness certificate of insured motor vehicle expired on 15.08.2015 and not renewed on the date of accident. The Tribunal failed to consider the report of the Motor Vehicle Inspector, marked as Ex.R3 and his evidence as R.W.3. In any event, the amounts granted by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

11.Per contra, the learned counsel for the claimants contended that the claimants have filed petition under Section 163-A of the Act. As per the said Section, the negligence on the part of the driver need not be proved. The Tribunal has considered Section 163-A of the Act and has held that claimants are entitled to compensation and 2nd respondent as an insurer is liable to pay the same. The Tribunal erred in awarding meagre amounts under different heads and erred in not awarding amount for funeral expenses and prayed for enhancement of the compensation.

12.Heard the learned counsel for the claimants as well as the 2nd respondent-Insurance Company and perused all the materials available on record.

13.The claim petition is filed by the claimants under Section 163 A of the Act. In the said claim petition, the claimants have stated that the deceased was earning a sum of Rs.15,000/- per month. Subsequently, they filed an application in I.A.No.330 of 2017 to amend the income of the deceased as Rs.40,000/- per year, so as to maintain the petition under Section 163-A of the Act. It is admitted by the claimants that the deceased drove his two wheeler and dashed against the stationed vehicle belonging to the 3rd respondent, which was parked on the left side of the road.

14.The claimants have filed claim petition under Section 163-A of the Act. As per this Section, the claimants need not plead and prove the negligence on the part of the rider or owner of the vehicle. The said Section is inserted with a view to avoid unnecessary delay in disposing the claim petitions and also to benefit the victim or the legal heirs of the deceased. This Section is non obstinate clause which over rides all other provisions contained in the Act and it has to be given effect. The scope of Section 163-A of the Act was considered by the Three-Judges Bench of the Hon'ble Apex Court in the judgments reported in 2017 (2) TN MAC 753 (SC) [United India Insurance Co. Ltd., Vs. Sunil Kumar and another] and 2018 (2) TN MAC 149 (SC) [Shivaji and another Vs. Divisional Manager, United India Insurance Co. Ltd., and others]. The relevant portions of the said judgments read as follows:

(i)2017 (2) TN MAC 753 (SC) [United India Insurance Co. Ltd., Vs. Sunil Kumar and another]:

> "7.....Section 163-A, on the other hand, was introduced in the New Act for the first time to remedy the situation where determination of final Compensation on fault basis under Section 166 of the Act was progressively getting protracted. The Legislative intent and purpose was to provide for payment of final compensation to a class of Claimants (whose income was below Rs.40,000 per annum) on the basis of a Structured Formula without any reference to fault liability. In fact, in Hansrajbhai Vs. Kodala (supra), the Bench had occasion to observe that:
>
> > "Compensation amount is paid without pleading or proof of fault, on the Principle of Social Justice as a Social security measure because of ever-increasing Motor Vehicle accidents in a fast-moving society. Further, the law before insertion of Section 163-A was giving limited benefit to the extent provided

> under Section 140 for no fault liability and determination of compensation amount on fault liability was taking a long time. That mischief is sought to be remedied by introducing Section 163-A and the disease of delay is sought to be cured to a large extent by affording benefit to the victims on Structured-Formula basis. Further, if the question of determining Compensation on fault liability is kept alive it would result in additional litigation and complications in case claimants fail to establish liability of the Owner of the defaulting vehicles."

8.From the above discussion, it is clear that grant of compensation under Section 163-A of the Act on the basis of the Structured Formula is in the nature of a Final Award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the Driver/Owner of the vehicle(s) involved in the accident. This is made explicit by Section 163-A (2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the Claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or to understand the provisions of Section 163-A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163-A of the Act, namely, final compensation within a limited time frame on the basis of the Structured Formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time. In fact, to understand Section 163-A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163-A of the Act at par with the proceeding under Section 166 of the Act, which would not only be self-contradictory but also defeat the very legislative intention.

9.For the aforesaid reasons, we answer the question arising by holding that in a proceeding under Section 163-A of the Act it is not open for the Insurer to raise any defence of neligence on the part of the victim."

(ii)2018 (2) TN MAC 149 (SC) [Shivaji and another Vs. Divisional Manager, United India Insurance Co. Ltd., and others]:

> "5.The issue which arises before us is no longer res integra and is covered by a recent judgment of Three-Judges of this Court in United India Insurance Co. Ltd., Vs. Sunil Kumar and another, 2017 92) TN MAC 753 (SC): AIR 2017 SC 5710, wherein it was held that to permit a defence of negligence of the claimant by the insurer and/or to understand Section 163-A of the Act as contemplating such a situation, would be inconsistent with the legislative object behind introduction of this provision, which is "final compensation within a limited time frame on the basis of the Structured Formula to overcome situations where the claims of Compensation on the basis of fault liability was taking an unduly long time". The Court observed that if an Insurer was permitted to raise a defence of negligence under Section 163-A of the Act, it would "bring a proceeding under Section 163-A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention". Consequently, it was held that in a proceeding under Section 163-A of the Act, the Insurer cannot raise any defence of negligence on the part of the victim to counter a claim for Compensation."

In view of the ratios in the above two judgments delivered by the Three-Judges Bench of the Hon'ble Apex Court, the claimants are entitled to compensation even though the deceased was responsible for the accident.

15.As far as the quantum of compensation is concerned, the Tribunal has awarded compensation as per II Schedule as provided under Section 163-A of the Act. The compensation awarded is just compensation and there is no error in the said award warranting interference by this Court. The contention of the learned counsel appearing for the claimants that the Tribunal failed to award any amount for funeral expenses is contrary to facts. The Tribunal has awarded a sum of Rs.2,000/- towards funeral expenses as per II Schedule of the Act. The claimants have not made out any case for enhancement of compensation.

16.For the above reasons, both the appeals are dismissed as devoid of merits. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Special District Judge,
   Full Additional Charge,
   (Motor Accidents Claims Tribunal), Erode.

+2cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.81051, 81052
+4cc to Mr.C.Paraneedharan, Advocate, S.R.No.80788

CMA.Nos.2280 and 2606 of 2018
and C.M.P.No.17369 of 2018

KAN(CO)
CS/18/07/2019